

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

BANK OF AMERICA, N.A.,

Plaintiff,

v.

NORTHWOODS SHOPPES TWO, LLC,
MONTGOMERY PLACE, LLC, and
BCC BENTON HARBOR, LLC,

Defendants.

Case No.: 1:10-cv-97

(Spiegel)

COMPLAINT

Bank of America, N.A. ("Plaintiff") files this complaint against Northwoods Shoppes Two, LLC, Montgomery Place, LLC and BCC Benton Harbor, LLC, and in support thereof, states as follows:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that the matter in controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs, and is between citizens of different states.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

PARTIES

3. Plaintiff is a national banking association having its main office at 100 N. Tryon Street, Charlotte, North Carolina.

4. Defendant Northwoods Shoppes Two, LLC ("Northwoods Shoppes") is an Ohio limited liability company having a business address of 9459 Montgomery Road, Cincinnati, Ohio 45242.

5. Defendant Montgomery Place, LLC ("Montgomery Place") is an Ohio limited liability company having a business address of 9459 Montgomery Road, Cincinnati, Ohio 45242.

6. Defendant BCC Benton Harbor, LLC ("BCC Benton", together with Northwoods Shoppes and Montgomery Place, the "Borrowers") is an Ohio limited liability company having a business address of 9459 Montgomery Road, Cincinnati, Ohio 45242.

7. The Borrowers are affiliated entities under the common management, ownership and control.

COUNT I

Plaintiff vs. Northwoods Shoppes

8. Plaintiff incorporates all preceding paragraphs herein by reference.

9. On or about June 2, 2005, Northwoods Shoppes duly executed and delivered to LaSalle Bank, National Association ("LaSalle") a Promissory Note in the original principal amount of \$6,640,000 (as amended, the "Northwoods Note"). A true and correct copy of the Northwoods Note is attached hereto as Exhibit "A".

10. As security for Northwoods Shoppes' obligations under the Northwoods Note, pursuant to that certain Open-End Construction Mortgage, Security Agreement and Assignment of Rents and Leases and Fixture filing dated as of June 2, 2005 (the "Northwoods Mortgage"), Borrower granted LaSalle a security interest and lien in certain real property located in Vandalia, Ohio as more fully described in the Northwoods Mortgage (the "Northwoods Mortgaged Property"). A true and correct copy of the Northwoods Mortgage is attached hereto as Exhibit "B".

11. Pursuant to the Northwoods Mortgage, LaSalle was also granted an assignment of all rents and profits derived from the Northwoods Mortgaged Property (the "Northwoods Rents", together with the Northwoods Mortgaged Property, the "Northwoods Collateral").

12. Plaintiff is the successor by merger to LaSalle and is the holder of the Northwoods Note, and the Northwoods Mortgage and all documents related thereto (collectively, the "Northwoods Loan Documents").

13. Northwoods Shoppes defaulted under the terms of the Northwoods Loan Documents due to its failure to satisfy the Northwoods Note on or before maturity.

14. By letter dated December 22, 2009, Plaintiff demanded the immediate payment in full of all obligations under the Northwoods Loan Documents.

15. As of January 19, 2010, the total amount of \$2,698,134.26 was due and owing under the Northwoods Loan Documents, consisting of \$2,602,323.49 in principal and \$95,810.77 in accrued but unpaid interest.

16. Interest continues to accrue on the unpaid principal balance at a *per annum* rate of 4.23063%.

WHEREFORE Plaintiff Bank of America, N.A. demands judgment against Defendant Northwoods Shoppes Two, LLC in the amount of \$2,698,134.26 as of January 19, 2009, plus interest thereafter, attorneys' fees, costs of suit, and foreclosure of its security interests in the Northwoods Collateral together with such other relief as is just and equitable under the circumstances.

COUNT II

Plaintiff vs. Montgomery Place

17. Plaintiff incorporates all preceding paragraphs herein by reference.

18. On or about August 26, 2005, Montgomery Place duly executed and delivered to LaSalle a Promissory Note in the original principal amount of \$2,725,000.00 (the "Montgomery Note"). A true and correct copy of the Montgomery Note is attached hereto as Exhibit "C".

19. As security for Montgomery Place's obligations under the Montgomery Note, pursuant to that certain Open-End Construction Mortgage, Security Agreement and Assignment of Rents and Leases and Fixture filing dated as of August 26, 2005 (the "Montgomery Mortgage"), Borrower granted LaSalle a security interest and lien in certain real property located in Montgomery, Ohio as more fully described in the Montgomery Mortgage (the "Montgomery Mortgaged Property"). A true and correct copy of the Montgomery Mortgage is attached hereto as Exhibit "D".

20. Pursuant to the Montgomery Mortgage, LaSalle was also granted an assignment of all rents and profits derived from the Montgomery Mortgaged Property (the "Montgomery Rents", together with the Montgomery Mortgaged Property, the "Montgomery Collateral").

21. Plaintiff is the successor by merger to LaSalle and is the holder of the Montgomery Note and the Montgomery Mortgage and all documents related thereto (collectively, the "Montgomery Loan Documents").

22. Montgomery Place defaulted under the terms of the Montgomery Loan Documents due to its failure to satisfy the Montgomery Note on or before maturity.

23. By letter dated December 22, 2009, Plaintiff demanded the immediate payment in full of all obligations under the Montgomery Loan Documents.

24. As of January 19, 2010, the total amount of \$2,830,933.05 was due and owing under the Montgomery Loan Documents, consisting of \$2,725,000.00 in principal and \$105,933.05 in accrued but unpaid interest.

25. Interest continues to accrue on the unpaid principal balance at a *per annum* rate of 4.23063%.

WHEREFORE Plaintiff Bank of America, N.A. demands judgment against Defendant Montgomery Place, LLC in the amount of \$2,830,933.05 as of January 19, 2009, plus interest thereafter, attorneys' fees, costs of suit, and foreclosure of its security interests in the Montgomery Collateral together with such other relief as is just and equitable under the circumstances.

COUNT III

Plaintiff v. BCC Benton

26. Plaintiff incorporates all preceding paragraphs herein by reference.

27. On or about September 2, 2004, BCC Benton duly executed and delivered to LaSalle a Promissory Note in the original principal amount of \$2,300,000.00 (as amended, the "BCC Note"). A true and correct copy of the BCC Benton Note is attached hereto as Exhibit "E".

28. As security for BCC Benton's obligations under the BCC Note, pursuant to that certain Open-End Construction Mortgage, Security Agreement and Assignment of Rents and Leases and Fixture filing dated as of September 2, 2004 (the "BCC Mortgage"), Borrower granted LaSalle a security interest and lien in certain real property located in Benton and Perkins Townships, Ohio and Berrien County, Michigan as more fully described in the BCC Mortgage

(the "BCC Mortgaged Property"). A true and correct copy of the BCC Mortgage is attached hereto as Exhibit "F".

29. Pursuant to the BCC Mortgage, LaSalle was also granted an assignment of all rents and profits derived from the BCC Mortgaged Property (the "BCC Rents", together with the BCC Mortgaged Property, the "BCC Collateral").

30. Plaintiff is the successor by merger to LaSalle and is the holder of the BCC Note and the BCC Mortgage and all documents related thereto (collectively, the "BCC Loan Documents").

31. BCC Benton defaulted under the terms of the BCC Loan Documents due to its failure to satisfy the BCC Note on or before maturity.

32. By letter dated December 22, 2009, Plaintiff demanded the immediate payment in full of all obligations under the BCC Loan Documents.

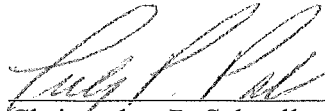
33. As of January 19, 2010, the total amount of \$2,288,711.36 was due and owing under the BCC Loan Documents, consisting of \$2,203,500.00 in principal and \$85,211.36 in accrued but unpaid interest.

34. Interest continues to accrue on the unpaid principal balance at a *per annum* rate of 4.23063%.

WHEREFORE Plaintiff Bank of America, N.A. demands judgment against Defendant BCC Benton Place, LLC in the amount of \$2,288,711.36 as of January 19, 2009, plus interest thereafter, attorneys' fees, costs of suit, and foreclosure of its security interests in the BCC Collateral together with such other relief as is just and equitable under the circumstances.

Dated: February 15, 2010

BUCHANAN INGERSOLL & ROONEY PC



Christopher P. Schueller, (PA Id. No. 92746)

Timothy P. Palmer (P.A. Id. No. 86165)

One Oxford Centre

301 Grant Street, 20th Floor

Pittsburgh, PA 15219-1410

Tel: (412) 562-8800

Fax: (412) 562-1041

Email: christopher.schueller@bipc.com

timothy.palmer@bipc.com

Attorneys for Bank of America, N.A.